

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 13 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STACEY K.,)	2 CA-JV 2010-0123
)	DEPARTMENT B
)	
Appellant,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC)	
SECURITY, DYLAN K., SABRINA K., and)	
TRISTAN K.,)	
)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J187753

Honorable Kathleen A. Quigley, Judge Pro Tempore

AFFIRMED

Sarah Michèle Martin

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Jane A. Butler

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

K E L L Y, Judge.

¶1 Stacey K., mother of Dylan, Sabrina and Tristan, born in March 1999, May 2001, and October 2003 respectively, appeals from the juvenile court’s October 2010 ruling terminating her parental rights to the children on the grounds of mental illness and length of time in court-ordered care (fifteen months or longer). *See* A.R.S. § 8-533(B)(3), (8)(c). She contends she was “unrepresented by accredited counsel” in the dependency proceeding, which violated her constitutional right to counsel and “tainted” the severance proceeding. She also contends that without admissions she made while unrepresented in the dependency proceeding, there was insufficient evidence to support the termination of her parental rights on either of the two grounds. We affirm for the reasons stated below.

¶2 Viewed in the light most favorable to sustaining the juvenile court’s ruling, *see Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007), the evidence established the children had been removed from the custody of Stacey and the children’s father in August 2008 and placed with the paternal grandmother because the conditions in and outside the home were “deplorable.” There were animal feces both inside and outside of the house and unsanitary and unsafe clutter everywhere. The Arizona Department of Economic Security (ADES) filed a dependency petition shortly thereafter, and in November the children were adjudicated dependent as to both parents after they admitted allegations in an amended dependency petition. Stacey and the children’s father were provided a number of services designed to reunify the family, which was the initial case plan goal. Although they were substantially in compliance with the case plan at the time of the initial permanency hearing in August 2009, after a second permanency hearing in April 2010, the court found the children could not safely be returned to the parents “without substantial risk of harm to the

minors' physical, mental or emotional health or safety.” Finding the parents were “not in full compliance with the case plan . . . even though they were given additional time from January to March,” the court changed the case plan to severance and adoption. ADES filed a motion to terminate the parents' rights in April 2010 as the court had directed. After seven days of hearings, in July and August 2010, the court terminated both parents' parental rights.

¶3 Stacey first contends she was deprived of her constitutional right to counsel during the dependency proceeding because her attorney had been suspended from the practice of law. Mary Valentine Schaffer, the attorney who had represented Stacey from August 2008 until January 2009, had been suspended from the practice of law on June 17, 2008, for failing to pay her Arizona State Bar dues. She apparently did not inform the presiding judge of the juvenile court about the suspension until after appearing at the January 27, 2009, dependency review hearing, agreeing to withdraw from all court-appointed cases. On July 31, 2009, after it was brought to the court's attention that Schaffer had failed to move to withdraw, the court appointed David Kovalik to represent Stacey, making the appointment retroactive to May 11, 2009. However, Kovalik already had appeared on Stacey's behalf, attending the May 18, 2009, dependency review hearing as her counsel. Stacey contends the admissions she made that had resulted in the court's adjudication of the children as dependent as to her were invalid because she was “unrepresented” at that time. And, she argues, this affected the outcome of the severance hearing.

¶4 Stacey waived any claim relating to the deprivation of counsel during the dependency proceeding and her challenge to the order adjudicating the children

dependent. She did not raise this issue in the juvenile court at any time during the severance hearing. *Christy C.*, 214 Ariz. 445, ¶ 21, 153 P.3d at 1081.

¶5 In addition, the order adjudicating the children dependent and all orders following the dependency review hearings were appealable orders. *See Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, ¶ 4, 1 P.3d 155, 156 (App. 2000) (“Orders declaring a child dependent, reaffirming a finding of dependency, or dismissing a dependency proceeding are final, appealable orders.”); *In re Maricopa County Juv. Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994) (“[O]rders arising from periodic review of dependency placement arrangements are appealable.”). She neither appealed from those orders nor did she seek leave to file a delayed appeal. *See Ariz. R. P. Juv. Ct. 108(B)*. Thus, we will not address Stacey’s arguments insofar as she is attempting to challenge the propriety of the court’s adjudication of the children as dependent. Moreover, the propriety of that ruling is rendered moot by the order terminating her parental rights. *Cf. Rita J.*, 196 Ariz. 512, ¶ 10, 1 P.3d at 158 (even if appealable, order entered after permanency hearing “essentially . . . rendered moot” by order terminating parental rights); *Sandblom v. Corbin*, 125 Ariz. 178, 182, 608 P.2d 317, 321 (App. 1980) (issue or case is moot if outcome would have no “practical effect” on parties).

¶6 We refuse Stacey’s alternative request to treat her challenge to the dependency adjudication as a special action. Even if we were to exercise our discretion and accept jurisdiction of the challenge as a special action, we would have no basis for granting relief because the juvenile court neither exceeded its authority nor abused its discretion. *See Ariz. R. P. Spec. Actions 3*.

¶7 Even assuming the arguments Stacey raises could be raised in this appeal insofar as they amount to a challenge to the termination order, again we find Stacey waived the arguments by failing to assert them below during the severance hearing, depriving the juvenile court the opportunity to address them. And, in any event, Stacey has not established any basis for disturbing the court's order terminating her parental rights. At all times Stacey was represented by counsel, albeit one who, unbeknownst to the court and the parties, was not in good standing with the Arizona State Bar. Schaffer was appointed to represent Stacey on August 26, 2008, attended an initial settlement conference with Stacey on October 8, 2008, and attended a facilitated settlement conference on October 30. At the settlement conference, the parties entered into the agreement resolving the dependency petition. Stacey signed the Agreement and Waiver of Dependency Trial, checking the spaces in front of the avowals that she understood the agreement and that she "had a chance to talk with [her] attorney about this case and this agreement." Schaffer also signed the agreement, avowing, "I have explained the terms of this agreement to my client. I believe that my client understands the rights she is giving up and the nature of these proceedings." Thus, Stacey was never left truly without representation and was represented when she admitted the allegations of an amended dependency petition and when the court found in subsequent rulings that the children remained dependent.

¶8 More importantly, however, we reject Stacey's related argument that what had occurred in the dependency proceeding, particularly her purportedly void admission that she had been diagnosed with Obsessive-Compulsive Disorder and Anxiety Disorder, affected the juvenile court's decision to sever her rights and "tainted" the severance proceeding. To sever a parent's rights, the court must find there is clear and convincing

evidence of at least one of the statutory grounds for termination, and that a preponderance of the evidence establishes that severing the parent’s rights is in the child’s best interests. *Christy C.*, 214 Ariz. 445, ¶ 12, 153 P.3d at 1078; *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We do not reweigh the evidence on appeal, rather, we defer to the juvenile court with respect to any factual findings because as the trier of fact, that court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). Consequently, we will affirm the order if reasonable evidence supports the factual findings upon which the order is based. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And as we previously stated, we view the evidence in the light most favorable to upholding the juvenile court. *See Christy C.*, 214 Ariz. 445, ¶ 12, 153 P.3d at 1078.

¶9 In its thorough, well-reasoned, nineteen-page ruling, the juvenile court entered extensive findings of fact, which are amply supported by the record before us. The court related those detailed factual findings to the grounds ADES had alleged in its motion to terminate Stacey’s parental rights and concluded ADES had sustained its burden as to two of the grounds—fifteen-month out-of-home placement and mental illness. No purpose would be served by restating the court’s order here in its entirety; rather, because the court’s ruling is supported by the record and the applicable law, we adopt it. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶10 Stacey’s admission that she had been diagnosed with Obsessive-Compulsive Disorder and Anxiety Disorder as part of the dependency adjudication

clearly had little, if any, effect on the court's decision. Stacey admitted at the severance hearing she had been diagnosed with Obsessive-Compulsive Disorder in 2002 and testified about the treatment she had received. The court specified in its under-advisement ruling the independent expert testimony and reports that established the nature of Stacey's mental illness, as well as how that mental illness and other factors kept the children out of the home pursuant to court order. There was an abundance of evidence supporting the court's order without the admissions that resulted in the dependency adjudication. We note, in addition, that any conflicts in the evidence were for the juvenile court, not this court, to resolve. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205.

¶11 We affirm the court's order terminating Stacey's parental rights.

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge